



9110-04P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0387]

RIN 1625-AA00

Safety Zone; Tug CHAMPION and Deck Barge MM-142 operating in the Straits of Mackinac

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port, Sault Sainte Marie zone. This temporary safety zone is necessary to protect the public, contractors, and the contractor's equipment from potential hazards associated with drilling, coring and surveying by persons conducting cable replacement and subsurface investigations in the Straits of Mackinac. Vessels will not be able to operate in certain U.S. navigable waters in the Straits of Mackinac within 500 yards of the Tug Champion and Deck Barge MM-142 without authorization from the Captain of the Port.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 7 p.m. on June 7, 2019. For the purposes of enforcement, actual notice will be used from 7 a.m. to 7 p.m. daily from May 17, 2019, through June 7, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2019-0387 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO Robert A Gruschow, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard; telephone (906) 253-2246, email Robert.A.Gruschow@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Drilling and coring must be done so that the American Transmission Company can begin the replacement of the servicing lines. Delaying this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public from the potential hazards associated with drilling, coring and surveying.

We are issuing this final rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone immediately to protect the public from the hazards associated with drilling, coring and surveying.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish safety zones: 46 U.S.C. 7003 ; 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1.

The American Transmission Company is scheduled to conduct cable replacement and subsurface investigations in the Straits of Mackinac from 7 a.m. to 7 p.m. daily from May 17, 2019 through June 7, 2019. This rule is needed to protect the public and responders within the safety zone from potential hazard associated with drilling, coring and surveying by persons on the Tug CHAMPION and Deck Barge MM-142 while this work is being done.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 7 a.m. to 7 p.m. daily from May 17, 2019 through June 7, 2019, unless drilling coring and surveying work is completed before June 7. If the COTP determines the rule need not to be enforced through June 7, he will issue a general permission to enter the zone and will issue a separate rule to terminate this regulation.

The safety zone will cover all U.S. navigable waters of the Straits of Mackinac bounded by longitudes 084°20'W and 085°10'W and latitudes 045°39'N and 045°54'N that are within 500

yards of where Tug CHAMPION and Deck Barge MM-142 will be operating. This rule is necessary to ensure the safety of the public and surveyors during these operations.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or telephone at 906-635-3233.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule is confined to area encompassing emergency operations. Under certain conditions, moreover, vessels may still transit through the safety zones

when permitted by the Captain of the Port.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of the vessels intending to transit or anchor in the vicinity of the safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons identified in the Regulatory Planning and Review section. Further, the Coast Guard will give advance notice to the public via a Broadcast Notice to Mariners so the public can plan accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal

agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone of limited size and duration. It is categorically excluded from further review under paragraph L60d of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev.01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the ADDRESSES section of this preamble. However, we seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements,

Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0387 to read as follows:

§ 165.T09-0387 Safety Zone; Temporary Safety Zone (500 yards) - around the Tug CHAMPION and Deck Barge MM-142 operating in the Straits of Mackinac.

(a) Location. The following areas are temporary safety zones: All U.S. navigable waters of the Straits of Mackinac bounded by longitudes 084°20'W and 085°10'W and latitudes 045°39'N and 045°54'N, within 500 yards of where the Tug CHAMPION and Deck Barge MM-142 will be operating

(b) Definitions. The “*on-scene representative*” of the Captain of the Port, Sault Sainte Marie is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sault Sainte Marie to act on his or her behalf. The on-scene representative of the Captain of the Port, Sault Sainte Marie will be aboard a Coast Guard vessel.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(2) Before a vessel Operator may enter or operate within the safety zone, they must obtain

permission from the Captain of the Port, Sault Sainte Marie, or his on-scene representative via VHF Channel 16 or telephone at (906) 635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

Dated: May 17, 2019.

C. L. MOBERLEY,

Commander, U.S. Coast Guard,

Captain of the Port, Sault Sainte Marie, Acting

[FR Doc. 2019-10700 Filed: 5/21/2019 8:45 am; Publication Date: 5/22/2019]